MINUTES
of the Second Meeting of the
Surgical Technologists' Technical Review Committee

December 22, 2015
9:00 a.m. to 3:00 p.m.
Lower Level Conference Room "F"
The Nebraska State Office Building, Lincoln, NE

Members Present	Members Absent	Staff Present
Douglas Vander Broek, DC (Chairperson)		Matt Gelvin
Christine Chasek, LIMHP, LADC		Ron Briel
Greg Gaden, EdD		Marla Scheer
Jeffrey L. Howorth		
Jane Lott, RDH, BS		
Robert Sandstrom, PhD, PT		
John Tennity, DPM		

I. Call to Order, Roll Call, Approval of the Agenda

Dr. Vander Broek called the meeting to order at 9:00 a.m. The roll was called; a quorum was present. The agenda and Open Meetings Law were posted and the meeting was advertised online at http://dhhs.ne.gov/Pages/reg_admcr.aspx . The committee members unanimously approved the agenda for the second meeting.

Then committee members unanimously approved the minutes of the first meeting after making two corrections.

II. Scheduling an Additional Meeting

The committee members selected January 14, 2016 at 10:00 a.m. as the date of their fourth meeting. Dr. Vander Broek commented that the committee is going to need an additional meeting date in January in order to complete their work in time for the Board of Health to review the proposal during its January 25, 2016 bimonthly meeting.

III. Committee Discussion and Questions

Dr. Sandstrom asked the applicants if there are any reporting requirements pertinent to misconduct by surgical technology employees. Casey Glassburner, CST, responded that there currently are none. Dr. Sandstrom then commented by asking at what point do we say that hospitals and other surgical facilities should be solely responsible for the conduct of their employees, adding, why do we need professional licensure on top of that to ensure public protection? Why do we need any additional regulation for such employees? Ms. Glassburner responded by stating that surgical technologists are involved in the provision of patient care and that what they do impacts the well-being of patients. She added that the complications pertinent to physician delegation stemming from the Howard Paul case is also a factor in justifying the need for licensure for surgical technologists. Physicians according to this 1898 ruling cannot delegate to surgical technologists because the latter are unlicensed personnel. Mr. Howorth commented that a

more recent court decision from 1998 known as 'the-captain-of-the-ship' ruling argues that during a surgical procedure the surgeon performing the procedure is deemed to have complete authority over all other personnel in the surgical suite and furthermore is solely liable for whatever outcome occurs as a result of the procedure he or she conducts.

Dr. Sandstrom then commented that the public does not have direct contact with surgical technologists in the sense that they aren't independent practitioners. They don't hang out a shingle and advertise their services. He then asked the applicants why they think they need a licensed scope of practice. Ms. Glassburner responded that a scope of practice would prevent surgical technologists from being used to perform functions that they should not be used for. Dr. Sandstrom responded that the problem with the proposed surgical technology scope is that it is nothing more than a list of functions and procedures, and does not define a scope of activities or professional services by which the public can be served. Such a list would constantly be vulnerable to rapid changes in technology or medical procedure which sometimes render procedures out-of-date, making it necessary to open up the statute to revise the list of scope elements to meet new technical realities. Dr. Sandstrom continued by stating that the applicants have provided no evidence that the current unregulated state of surgical technology has resulted in any harm to the public.

Ms. Glassburner replied to Dr. Sandstrom's question about the need for a licensure for surgical technologists by stating that there are too many inconsistencies between surgical facilities as to how they are trained and in what they are trained, and that licensure would eliminate these inconsistencies. Ms. Lott expressed agreement with Ms. Glassburner's remark, adding that she has concerns about the inconsistent training of surgical technology employees among rural surgical facilities.

Dr. Tennity commented that another problem with a laundry list of acceptable practice elements is that such a list would limit the surgical technologist and be unlikely to include helping a surgeon during a medical emergency, for example. Ms. Glassburner replied that it is just this kind of emergency that justifies licensure of surgical technologists because it illustrates that surgical technologists are involved in patient care.

Jay Slagle, a representative of both the Midwest Eye Surgery Center and the Nebraska Association of Independent Ambulatory Centers, commented that modern surgical facilities are all monitored by organizations such as JAACHO and Medicare, for example, and that conformity to the standards of such overarching national organizations makes it virtually impossible to avoid conforming to safe and effective practices. Thorough and detailed regulation is an all-pervasive thing across the board in all surgical facilities in our state.

Mr. Slagle responded to applicant arguments about the need for their proposal by arguing that the imperatives of risk and reputation 'drive' the desire for maintaining high standards in all aspects of the care that health care facilities provide. There's no need for the state to impose additional regulation in this area of care. Dr. Tennity asked Mr. Slagle if he thinks that current market forces, such as a low unemployment rate, would be a bigger factor in hiring and paying surgical staff, versus the applicants' proposal. Ms. Lott responded to Dr. Tennity by stating that rural areas often lag behind urban areas in the impact of the kind of market forces that Dr. Tennity refers to. Profit margins are more constrained therein and the temptation to cut corners by cutting standards is greater in these areas as well.

Dr. Vander Broek asked the applicants if it is true that costs of education and training are very high in some surgical technology training programs. Ms. Glassburner responded that she is aware of this problem and that there is an effort currently underway to address this problem.

Dr. Vander Broek asked the applicants about the proposed registration provision in the surgical first assistant proposal. Ms. Glassburner responded that her group could not get clarification from that applicant group regarding who would oversee the assessment provision for the registry, neither could they get clarification as to what exactly this assessment process would entail.

Dr. Sandstrom asked the applicants whether some kind of title protection might address concerns raised about the unregulated circumstances of surgical technology. Ms. Glassburner responded that the Howard Paul ruling still complicates the situation and limits the ability of something as simple as title protection to address surgical technology concerns.

Dr. Vander Broek asked the applicants to address the employment situation of their profession. Ms. Glassburner responded that there is a strong and steady demand by employers for surgical technology graduates. The applicants noted that of the seventeen Southeast Community College students who graduated last Friday sixteen have already accepted job offers. A representative from the CHI hospitals noted that she currently has fourteen open surgical technologist positions in the Omaha metropolitan area.

Jay Slagle commented that if the proposal were to pass the existing shortage of surgical technologists would be greatly amplified, leading to higher wage costs for hospitals and surgery centers that employ them. The smaller pool of qualified candidates would be a significant hardship for independent surgery centers as well as rural hospitals which, having found it difficult to compete with metropolitan hospitals for surgical technologist applicants, have often employed 'OJT' trained surgical employees to fill surgical technologist openings. Dr. Tennity agreed with this assessment of the employment situation, adding that the proposal would create significant new hardship for independent ambulatory centers.

IV. Formulation of Preliminary Recommendations

Action was taken by the committee members on the following four statutory criteria of the Credentialing Review Program:

Criterion one: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.

Discussion: Dr. Vander Broek asked if there has ever been a complaint about surgical technologist services. Ms. Glassburner responded that there have been none in Nebraska but that there have been some in other states. Jay Slagle commented that the data from other states in this regard is not clear as to whether it is indicative of a significant problem with quality of services or not. Dr. Sandstrom commented that there would be some potential for risk of harm because there are always those who are willing to commit crimes or abuse drugs and alcohol, for example.

Voting yes on this criterion were Chasek, Gaden, Lott, Sandstrom, and Tennity. Voting no was Howorth. Vander Broek abstained from voting.

Criterion two: Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified

practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.

Dr. Tennity commented that there is potential for new harm because the proposal would likely drive up costs for employers. Dr. Sandstrom commented that shortages of providers would likely result, adding that what is needed is not licensure but some kind of title protection. Jay Slagle commented that his company currently hires 'OJT' trained surgical technologists. The current proposal would put an end to this practice, and that it would be rural areas of our state that would likely suffer the most from these changes. Voting yes on this criterion were Chasek and Gaden. Voting no were Lott, Sandstrom, and Howorth. Vander Broek and Tennity abstained from voting.

Criterion three: The public needs assurance from the state of initial and continuing professional ability.

Dr. Tennity commented that there is a need for such assurance. Mr. Howorth commented that yes there is such a need, but assurance from whom, the state, or someone else? Dr. Tennity replied that it's the responsibility of the State because individual facilities may have different educational and training standards. Mr. Howorth responded by stating that in this case the responsibility should be borne by each facility. Dr. Sandstrom commented that there is a need for assurance of competency but that there is a need for a new proposal to achieve this, one that would bring together both sides of the controversy, adding that one way to do this would be to use continuing education to build common ground among the various parties. Ms. Lott expressed support for the public approach rather than the private facility approach, expressing concern that for-profit institutions might not be the most objective or fair-minded groups to provide leadership in an effort to address competency concerns.

Voting yes on this criterion were Chasek, Gaden, Lott, Sandstrom, Howorth, and Tennity. Vander Broek abstained from voting.

Criterion four: The public cannot be protected by a more effective alternative.

Dr. Sandstrom commented that the scope of practice component of the current proposal would not be workable, and that a less restrictive way needs to be found to address the concerns raised by the applicant group.

Voting yes on this criterion were Chasek, Gaden, Lott, Howorth, and Tennity. Voting no was Sandstrom. Vander Broek abstained from voting.

Action was taken by the committee members on the entire proposal via an 'up-down' vote as follows:

Voting yes were Chasek, Gaden, Lott, and Tennity. Voting no were Howorth and Sandstrom. Vander Broek abstained from voting.

V. Discussion and Questions Pertinent to the Upcoming Public Hearing

- Dr. Sandstrom commented that it would be beneficial to receive testimony about the Howard Paul case from an attorney knowledgeable in these kinds of cases.
- Ms. Chasek commented that she would like to receive more testimony about how disciplinary matters would be handled under registration compared to a licensing process.
- Dr. Tennity stated that he would like to have information regarding what the fees might be for each surgical technologist if licensure were to pass.
- Dr. Sandstrom asked whether it would be possible to create a registration concept for surgical technologists that would include training requirements as well as competency requirements.
- Dr. Sandstrom commented that it would be beneficial for the committee members to receive testimony from surgeons regarding the subject of tissue manipulation by surgical technologists.

VI. Future Meeting Dates

The following meeting dates and times were selected by the committee members:

- January 5th, 2016: 9:00 a.m. to 3:00 p.m.
- January 14th, 2016: 10:00 a.m. to 11: 00 p.m.

VII. Public Comment

There was a brief discussion about the subject of delegation of duties to surgical technologists by nurses and physicians under current Nebraska law.

VIII. Next Steps

The next step in the review process on this proposal is the public hearing scheduled to be held on January 5, 2016.

IX. Other Business and Adjournment

There being no further business, the committee members unanimously agreed to adjourn the meeting at 1:00 p.m.